

AMENDED IN SENATE AUGUST 7, 2002

AMENDED IN SENATE JUNE 18, 2002

AMENDED IN ASSEMBLY APRIL 22, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2944

Introduced by Assembly Member Kehoe

(Principal coauthor: Senator Bowen)

***(Coauthors: Assembly Members John Campbell, Koretz,
Lowenthal, and Nation)***

(Coauthors: Senators Dunn, Morrow, and O’Connell)

February 25, 2002

An act relating to energy conservation and development; to amend Section 17538.4 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL’S DIGEST

AB 2944, as amended, Kehoe. ~~Energy conservation and development; San Diego Solar Streetlights Pilot Program Advertising; facsimile machines.~~

Existing state law prohibits a person conducting business in this state from faxing or electronically mailing unsolicited advertising material, unless certain conditions are met.

This bill would delete the existing state law prohibition relative to the faxing of unsolicited advertising material.

~~(1) Existing law establishes the State Energy Resources Conservation and Development Commission within the Resources~~

Agency, with powers and responsibilities that include the development of alternative renewable sources of energy.

This bill would establish, until January 1, 2006, the San Diego Solar Streetlights Pilot Program to educate the public on the feasibility of solar energy systems and to encourage greater use of solar energy systems in both commercial and residential applications. The bill would require the City of San Diego, if successful in effectuating the pilot project, to report to the commission on the pilot program, and thus would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes no. State-mandated local program: yes no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. The Legislature finds and declares all of the~~
- 2 ~~SECTION 1. Section 17538.4 of the Business and Professions~~
- 3 ~~Code is amended to read:~~
- 4 17538.4. (a) No person or entity conducting business in this
- 5 state shall facsimile (fax) or cause to be faxed, or electronically
- 6 mail (e-mail) or cause to be e-mailed, documents consisting of
- 7 containing unsolicited advertising material for the lease, sale,
- 8 rental, gift offer, or other disposition of any realty, goods, services,
- 9 or extension of credit unless:
- 10 ~~(1) In the case of a fax, that person or entity establishes a~~
- 11 ~~toll-free telephone number that a recipient of the unsolicited faxed~~
- 12 ~~documents may call to notify the sender not to fax the recipient any~~
- 13 ~~further unsolicited documents.~~
- 14 ~~(2) In the case of e-mail, that person or entity establishes a~~
- 15 ~~toll-free telephone number or valid sender operated return e-mail~~

1 address that the recipient of the unsolicited documents may call or
2 e-mail to notify the sender not to e-mail any further unsolicited
3 documents.

4 (b) All unsolicited ~~faxed or~~ e-mailed documents subject to this
5 section shall include a statement informing the recipient of the
6 toll-free telephone number that the recipient may call, or a valid
7 return address to which the recipient may write or e-mail, as the
8 case may be, notifying the sender not to ~~fax or~~ e-mail the recipient
9 any further unsolicited documents to the ~~fax number, or numbers,~~
10 ~~or~~ e-mail address, or addresses, specified by the recipient.

11 ~~In the case of faxed material, the statement shall be in at least~~
12 ~~nine-point type. In the case of e-mail, the~~

13 *The* statement shall be the first text in the body of the message
14 and shall be of the same size as the majority of the text of the
15 message.

16 (c) Upon notification by a recipient of his or her request not to
17 receive any further unsolicited ~~faxed or~~ e-mailed documents, no
18 person or entity conducting business in this state shall ~~fax or cause~~
19 ~~to be faxed or~~ e-mail or cause to be e-mailed any unsolicited
20 documents to that recipient.

21 (d) ~~In the case of e-mail, this~~ *This* section shall apply when the
22 unsolicited e-mailed documents are delivered to a California
23 resident via an electronic mail service provider's service or
24 equipment located in this state. For these purposes "electronic
25 mail service provider" means any business or organization
26 qualified to do business in this state that provides individuals,
27 corporations, or other entities the ability to send or receive
28 electronic mail through equipment located in this state and that is
29 an intermediary in sending or receiving electronic mail.

30 (e) As used in this section, "unsolicited e-mailed documents"
31 means any e-mailed document or documents consisting of
32 advertising material for the lease, sale, rental, gift offer, or other
33 disposition of any realty, goods, services, or extension of credit
34 that meet both of the following requirements:

35 (1) The documents are addressed to a recipient with whom the
36 initiator does not have an existing business or personal
37 relationship.

38 (2) The documents are not sent at the request of, or with the
39 express consent of, the recipient.

(f) As used in this section, ~~“fax” or “cause to be faxed” or “e-mail” or “cause to be e-mailed”~~ does not include or refer to the transmission of any documents by a telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(g) In the case of e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, the subject line of each and every message shall include “ADV:” as the first four characters. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit; that may only be viewed, purchased, rented, leased, or held in possession by an individual 18 years of age and older, the subject line of each and every message shall include “ADV:ADLT” as the first eight characters.

(h) An employer who is the registered owner of more than one e-mail address may notify the person or entity conducting business in this state e-mailing or causing to be e-mailed; documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit of the desire to cease e-mailing on behalf of all of the employees who may use employer-provided and employer-controlled e-mail addresses.

(i) This section, or any part of this section, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail).
~~following:~~

~~(a) It is in the best interests of the people of this state that the quality of life of its citizens be improved by providing environmentally sound, safe, reliable, and affordable energy services and products.~~

~~(b) It is in the best interests of the people of this state to reduce our reliance upon electricity generated by thermal powerplants.~~

~~(c) It is in the best interests of the people of this state to encourage the use of alternative energy sources, including solar energy systems, as a means of reducing that reliance.~~

1 ~~(d) Pilot programs demonstrating to the public both the~~
2 ~~feasibility and reliability of alternative energy sources are an~~
3 ~~effective means to encourage the public to use solar energy~~
4 ~~systems.~~

5 ~~SEC. 2. (a) The San Diego Solar Streetlights Pilot Program~~
6 ~~is hereby established to educate the public on the feasibility of~~
7 ~~solar energy systems as an alternative renewable energy source,~~
8 ~~and to encourage greater use of solar energy systems in both~~
9 ~~commercial and residential applications.~~

10 ~~(b) The project shall utilize resources of California alternative~~
11 ~~energy companies for a solar street lighting system for a portion~~
12 ~~of the city not to exceed a six block radius. "Street lighting~~
13 ~~system" includes any or all appliances, poles, posts, electroliers,~~
14 ~~transformers, lighting units, lamps, cables, wires, pipes, conduits,~~
15 ~~and other suitable or necessary works or appliances for street~~
16 ~~lighting purposes.~~

17 ~~(c) The participating alternative energy companies shall, in~~
18 ~~consideration of certain incentives to be devised by the City of San~~
19 ~~Diego in concert with the alternative energy producers, donate the~~
20 ~~physical plant and necessary infrastructure to bring the pilot~~
21 ~~project into being. No state funds shall be encumbered in order to~~
22 ~~conduct, or pay for, any part of the pilot program originally~~
23 ~~undertaken or provided by any industry or business participant.~~
24 ~~Nothing in this subdivision shall be construed as prohibiting the~~
25 ~~use of federal funds, should they become available for purposes~~
26 ~~consistent with this section or preventing the commission from~~
27 ~~using existing resources, to provide technical or other assistance~~
28 ~~to the program.~~

29 ~~(d) The industry or business participants of the pilot program~~
30 ~~may be identified in public, provided the brands of products~~
31 ~~employed shall not be identified, nor shall their use be deemed an~~
32 ~~endorsement of any particular brand or proprietary approach to~~
33 ~~using alternative energy.~~

34 ~~(e) On or before January 1, 2005, if the City of San Diego is~~
35 ~~successful in effectuation of the pilot project, the city shall report~~
36 ~~to the State Energy Resources Conservation and Development~~
37 ~~Commission on the pilot program. This report shall include, but is~~
38 ~~not limited to, an analysis of the costs and benefits of equipment~~
39 ~~and materials used in the pilot program, a discussion of the results~~

1 ~~obtained and a discussion of the implications for statewide~~
2 ~~implementation of the program.~~

3 ~~(f) This section shall remain in effect only until January 1,~~
4 ~~2006, and as of that date is repealed, unless a later enacted statute,~~
5 ~~that is enacted before January 1, 2006, deletes or extends that date.~~

6 ~~SEC. 3. Notwithstanding Section 17610 of the Government~~
7 ~~Code, if the Commission on State Mandates determines that this~~
8 ~~act contains costs mandated by the state, reimbursement to local~~
9 ~~agencies and school districts for those costs shall be made pursuant~~
10 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~
11 ~~2 of the Government Code. If the statewide cost of the claim for~~
12 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~
13 ~~reimbursement shall be made from the State Mandates Claims~~
14 ~~Fund.~~

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